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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

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To The Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Petitioner herein prays that a Writ of Certiorari be issued to review the final decree of the Connecticut Supreme Court of Errors, in In re Application of Arthur J. Plantamura For Admission to the Bar, not yet reported, which denied petitioner's application for admission to practice law.

OPINIONS BELOW.

The decision sought to be reviewed is the final judgment of the Supreme Court of Errors of the State of Connecticut dated November 28, 1961, and announced on December 12, 1961, affirming the decision of the Superior Court of Fairfield County of Connecticut, 22 Conn. Sup. 213. A copy of the opinions rendered by said courts is annexed to this petition as appendix I and II, respectively.

Petitioner's motion for reargument of the decision of the Connecticut Supreme Court was denied without opinion on December 28, 1961.

JURISDICTION.

The statutory provision believed to confer jurisdiction upon this Court to review the judgment of the court below is United States Code, Title 28, Section 1257(3).

Although in this case the constitutional issue was not specifically raised until the petition for reargument was presented to the state court, petitioner submits that jurisdiction should be sustained because the rule adopted by the State Supreme Court supplies a new and unexpected basis for a claim of denial of a Federal right. The following cases are believed in support of jurisdiction:

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673, 74 L ed 1107

Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 US 358, 77 L ed 360

due to the fact that the state court's course in disregarding earlier applicable decisions could not have been anticipated which decisions conflict with the ruling in this case and which have not been distinguished.

QUESTIONS PRESENTED FOR REVIEW.

1. Whether a state has absolute power over those who may practice law within its borders regardless of the validity of the ground imposed in denying admission; that is, whether a state may arbitrarily erect a barrier in the form of a qualification having no rational connection with fitness or capacity to practice law in excluding an attorney from another state who has long engaged in the practice of law, without in effect depriving him of property in the form of his right to his livelihood in contravention of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

2. In a matter where an attorney from another jurisdiction seeks admission to the bar of a state on motion and the state acknowledges that:

> "The applicant has satisfied all requirements for admission. He has all educational qualifications, is of good moral character and has practiced (patent) law in the District of Columbia for more than five years."

May that state nevertheless arbitrarily deny petitioner's admission to practice law for a reason which has no rational connection with petitioner's fitness or capacity to practice law without violating petitioner's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

3. Whether an interpretive qualification of a state court rule for admission on motion to the state bar, which qualification conflicts with other interpretive decisions of the highest court of that state and which is the sole reason for excluding petitioner from admission to the state bar, arbitrarily deprives petitioner of his constitutional rights in the form of deprivation of property secured to him by the Constitution when it operates to bar him from admission to the practice of law in that state?

CONSTITUTIONAL PROVISION.

The state ruling which denies the motion of the petitioner, an attorney from the District of Columbia, for admission to practice in the State of Connecticut as an attorney solely for a reason which has

no rational connection with petitioner's fitness or capacity to practice law contravenes the Fourteenth Amendment to the United States Constitution because it deprives petitioner of property without due process and denies him the equal protection of the laws.

STATE RULE.

This case involves the validity of a qualification that requires court appearance in a state's rule governing admission of attorneys from another jurisdiction on motion and without examination.

The applicable part of the state rule (which is reproduced in full in the appendix), Connecticut Practice Book Sec. 8, reads:

> "Sec. 8. ADMISSION OF ATTORNEYS OF OTHER STATES. Any member of the bar of another state, who . . . (2) . . . has actually practiced law for at least five years in the highest court of original jurisdiction in one or more states, or in one or more district courts of the United States, and is in good standing, . . . may be admitted by the court as an attorney without examination . . ."

CONCISE STATEMENT.

The petitioner is an attorney admitted to the practice of law before the highest court of original jurisdiction in the District of Columbia in April, 1953. He was thereafter admitted to practice before the

Court of Customs and Patent Appeals in May, 1953, the U. S. Court of Appeals for the District of Columbia in August, 1953, and before the United States Supreme Court in January, 1959. He is, and for more than six years has been, a member of the American Bar Association and American Patent Law Association. He practiced in the District of Columbia subject to the jurisdiction and power of supervision of the District Court longer than the minimum period of five years required by the Sec. 8 of the Connecticut rule. At all times, petitioner was prepared to have recourse to any one of the above courts in the event that his client's matter necessitated that action. He was under no disability at any time which would prevent his appearance for litigation in any one of those courts. He has been denied admission by the state solely because in the course of his practice he did not appear in court.

It is not disputed that petitioner has engaged in the actual practice of law within the jurisdiction of the District of Columbia continuously and without interruption since his admission and for a period longer than the minimum period of five years required by Sec. 8 of the state rule governing admissions.

Petitioner applied for admission to the Connecticut Bar under Sec. 8 of the rules of the court (Connecticut Practice Book, 1951, as amended) governing admission on motion and without examination. His admission was not recommended by the Admissions Committee solely because of the committee's understanding that court appearances comprise a

critical qualification. The decision of the Superior Court which then heard petitioner's case states:

> "The facts are undisputed. The applicant has satisfied all requirements for admission. He has all educational qualifications, is of good moral character and has practiced (patent) law in the District of Columbia for more than five years."

However, believing itself bound by the State's Supreme Court ruling in In re Application of Dodd, 132 Conn. 237, 43A 2d 224, the Superior Court affirmed the Admission's Committee. The Superior Court denied a motion to reargue. On appeal to the State Supreme Court, petitioner demonstrated that in fact the Dodd case was irreconcilable with the Superior Court's ruling. The State Supreme Court, without distinguishing, disregarded the Dodd decision which is the single decision that considers the provision of the rule under consideration.

The sole obstacle forming the basis for refusing petitioner's admission in this case is that in his practice of law petitioner did not appear in court during his actual practice of law before that court, which admitted him, and Sec. 8 of the state rule, it is said, requires practice of law in the form of presence in the court. Petitioner, supported by applicable decisions of the highest court of Connecticut, contends that no valid distinction can be drawn between the part of the work of a lawyer involving appearance in court and the part which involves advice and the drafting of instruments. The showing of actual uninterrupted and continuous prior practice of law on the part of petitioner, including his appearance in the necessary court for admission to practice there-

in, was disregarded and held to be entitled to no greater weight than a mere unexercised right to practice. In substance, the Connecticut Supreme Court applied the portion of its rule which reads:

> "actually practiced law for at least five years in the highest court of original jurisdiction."

to mean that personal appearance in court is a critical prerequisite to admission. The state rule, albeit inadvertently, thereby indicates to an attorney from another jurisdiction that he had best arrange his client's matters so that his practice of law brings him into court if admission to its state bar is to be expected.

THE FEDERAL QUESTION.

The constitutional question was raised expressly in this case by petitioner's motion to reargue the decision of the State Supreme Court. The motion to reargue was denied.

Although a constitutional question is not ordinarily timely raised when first presented by a motion for reargument, petitioner submits that the federal question developed in the State Supreme Court and it was raised at the first opportunity and passed upon adversely. **San Jose Land & Water Co. v. San Jose Ranch Co.,** 189 US 177, 47 L ed 765. Jurisdiction is believed proper under the exceptions to the general rule because of the State Supreme Court's arbitrary disregard of earlier applicable decisions, its entirely unsupported position, and because its ruling directly conflicts with earlier decisions of that court which comprise a part of the governing law

of that state. Petitioner could not have reasonably anticipated that the state court would not follow existing law, and specifically that it would not adhere to, or consider, the rule adopted in earlier applicable decisions of that state.

The appropriateness of jurisdiction where, as here, the constitutional issue is raised on a motion for rehearing finds support in:

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673, 74 L ed 1107 and

Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 US 358, 77 L ed 360.

The practical operation of the conflicting rule adopted by the state in this case violates the Constitution; the jurisdiction of the United States Supreme Court may not be defeated by a state by putting forward a non-federal ground of decision which is without any fair or substantial support. **Wolfe v. North Carolina,** 364 US 177, 4 L ed 2d 1650, 80 S Ct 1482.

The State Court's judgment cannot be sustained on an independent ground of state law because petitioner has complied with all sound state imposed qualifications which have a rational connection with petitioner's fitness and capacity to practice law. The judgment cannot be sustained on an adequate independent ground of state law because the qualification of court appearance(s) imposed against petitioner is not supported by any prior authoritatively declared rule of Connecticut or of any jurisdiction. In fact, it conflicts with decisions of the highest court

of Connecticut. The judgment cannot be sustained on an adequate independent state ground because the qualification is capricious and outside the scope of reasonable safeguards which a state may fairly adopt in the public interest. The state rule, arbitrarily declared and wholly unsupported in this case, is in fact repugnant to national rights and uniformity of judgments.

ARGUMENT.

I. High Standards Is Not An Issue.

A state may make its requirements as strict as it feels are necessary to protect the public and the courts but the requirements should in fact be necessary and proper and having a fair and consistent legal basis. Petitioner complied with each of the sound prerequisites of the state governing admission to practice law on motion. It is hopeless to expect that one may also comply with arbitrary barriers having no guides and no rational connection to an applicant's fitness or capacity to practice law. The Due Process Clause is applicable to matters of substantive law as well as to matters of procedure. This clause of the Constitution is violated here. Patent lawyers in Connecticut, qualified in every respect including graduation from approved scientific and legal institutions and having long years of actual practice of law, are denied admission on an arbitrary concept that some appearances in court for some uncertain period of times will establish a qualification. In effect, a federal question of substance has been decided in a way not in accordance with ap-

plicable decisions of this Court because the attorney is deprived of property, in the form of his right to continue in the practice of law, without due process. He is excluded from admission to a bar to which he qualifies in all respects excepting a state created qualification which has no rational connection with the attorney's fitness or capacity to practice law and has no basis in law.

II. The Safeguard Ruling Is In Fact Superficial.

The State Supreme Court states that the qualification of court appearance provides a "safeguard" to the state. The "safeguard" reason may provide some support for the temporary license feature of Sec. 8 of the Court rule. Insofar as it applies to one who has been admitted and has actually practiced law and is otherwise fully qualified, it is without any fair or substantial support. In this case, the purported non-federal ground is not a tenable one because: it is arbitrary; it does not rest on an adequate state ground; it is unsupported in law; it, in fact, conflicts with Connecticut law; and it encourages a conduct contrary to the Canons of Ethics. The State Court's reason that "The framer of the rule could reasonably consider that such a requirement would provide a fair and desirable safeguard" is seemingly an effort to support the decision on an independent non-federal ground to defeat the jurisdiction of this Court. **Enterprise Irrigation District v. Farmers Mutual Canal Co.**, 243 US 157, 164, 61 L ed 644, 649. This appears particularly significant because it is exclusively that Court which frames the rule and because no authority is mentioned for the position adopted.

Other states have similar language, yet none have adopted a similar position.

The qualification conflicts with law and reason and, because of its arbitrary and conflicting impression, it has an adverse and confusing influence on the public interest. Its obvious effect is to deny certain attorneys from other jurisdictions the right to continue to counsel clients and prepare legal instruments, not for a sound reason, but for an arbitrary insubstantial reason. It has the further obvious effect on attorneys in other jurisdictions, having the contingency in mind of relocation to Connecticut, of tending to encourage the prolongation of litigation into court when ethically the client could be advised to avoid or end litigation whenever the controversy will admit of fair adjustment (Canon 8, Canons of Professional Ethics). It is therefore submitted that a qualification of the kind imposed by the state which insists on court appearance is undesirable because a sounder legal procedure would appear favored by a more ethical decision along the way.

III. In The Absence of a Valid Reason, An Attorney Has a Right to Practice Law.

Irrespective of whether the practice of law is a "right" or "privilege" in situations involving persons seeking to practice law in the first instance, when the matter involves the admission of an attorney from another jurisdiction, the attorney has the right to admission to practice except for a valid reason. Such practice is not a matter of a state's grace. **Schware v. Board of Bar Examiners,** 353 US 232, 1 L ed 2d 796, 77 S Ct 752.

IV. The State Supreme Court and Not The Committee Establishes The Rule.

In Connecticut, decisions on matters involving proceedings for admission to the bar reside exclusively in the Supreme Court of that State. That court has often restated its power in such matters.

> "The Supreme Court of Errors . . . has the inherent power, independent of and despite any statute, to make rules governing procedure before it . . . By virtue of the provisions of § 27 of No. 651 of the 1957 Public Acts, the judges of the Supreme Court of Errors now have the power to adopt, promulgate, and from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in the courts established by the General Assembly."
>
> **State Bar Association v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 232-233, (1958).

> "The bar examining committee is an arm of the court to which is entrusted the administration of specific details, including, and properly so, the power to act on the educational qualifications for admission to the bar . . . The committee can act, however, only under the supervision of the court. It is the court, and not the committee, which takes the final and decisive action."
>
> **Heiberger v. Clark**, 148 Conn. 177, 183-184 (1961).

V. Invalidity and Legal Conflict of Qualification Particularized In the Record.

The record clearly notes that distinctions made between the practice of a lawyer involving court appearance and that involving advice and drafting of instruments are unjust and invalid (R. p. 22, item 28). Also, emphasized is the position that a rule drawing a distinction in the practice of law on the basis of court appearance cannot be reconciled with the prior decisions of the State Supreme Court (R. p. 21, item 13; p. 27, item 39). In its decision in the present case, the State Supreme Court disregards its earlier decisions of **In re Application of Dodd,** 132 Conn. 237, 43 A 2d 224, and **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, 149 A 2d 863, which petitioner submits are directly applicable and which are critical in deciding petitioner's case. The State Court could only reach the conclusion it has by excluding, as it did, those decisions. Yet, in a recent case, involving the power of the legislature on matters of admission to the bar, decided by the State Supreme Court less than nine months earlier in **Heiberger v. Clark,** 148 Conn. 177, 169 A 2d 652, both the Dodd and State Bar Association cases, supra, were considered by the court even though the facts in the Heiberger Case are substantially more remote to those decisions than petitioiner's case. Significantly, the State Bar Association case, 145 Conn. 222, is cited under Sec. 51-80, Chapter 876 (of the Official Text of the General Statutes of Connecticut) which governs admission of attorneys. Moreover, the State Supreme Court disregarded other authorities cited by petitioner. The Court cited none in support of its conclusion.

It is thus submitted that the disposition of petitioner's application for admission to practice in the state was entirely arbitrary and without due regard for applicable legal basis.

VI. Court Appearance is Contingent on a Client's Interest — It May Not Be Forced.

Petitioner during his practice was under no disability to prevent him from appearing in court. Furthermore, in the practice of law, petitioner had many occasions, as may be verified from his practice before the Patent Office, to exercise the discretion of appearing in court under the provisions of 35 USC § 145 (see appendix IV) wherein dissatisfaction is the sole prerequisite to court litigation. Simply because patent lawyers as a rule favor a fair adjustment of client's claims in the Patent Office rather than prolong the matter in the courts is not a sound reason for disqualification. No rule should suggest or tend to encourage aims conflicting with an attorney's obligations. This is best expressed by the Connecticut Court's own words when it said:

> "A dual trust is imposed on attorneys at law. They must act with fidelity both to the courts and to their clients. They are bound by canons of ethics which are enforced by the courts. The relation of an attorney to his client is pre-eminently confidential. It demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interests of his client."

State Bar Association v. Connecticut Bank & Trust Co., 145 Conn. 222, 234.

A further effect of the arbitrary qualification of court appearance imposed by the state, due to the deference of federal district courts to states in which they are situated, is to deprive attorneys specializing in federal law who become citizens of the state the right to practice in a court of the federal system to which they have qualified, for a reason which has no rational connection to the attorney's fitness or capacity to practice law. The consequence is that the state makes the federal court a participant of the arbitrary ruling. In this situation, the character of the qualification of the state rule and the fact that the qualification has been treated differently in similar situations makes it clear that the State Court considers it a matter of the state's grace whether petitioner may practice law. Petitioner's prior qualification, his admission to practice law and the fact that he actually engaged in the practice of law is rendered immaterial by the state rule in considering the value of prior practice of law as applied to "safeguards". One further obvious effect of the state ruling requiring court appearances by attorneys is that the qualification need not be consistent with law in that state.

VII. The Schware Case.

In **Schware v. Board of Bar Examiners**, 353 US 232, 1 L ed 2d 796, the United States Supreme Court held that while a state may require high standards of qualifications, any qualification it requires must

have a rational connection with the applicant's fitness or capacity to practice law. There is no reason why this basic precedent on national rights should not apply here. All suitable qualifications affording safeguards to the state have been complied with. The rule applied in this case, requiring court appearance in the practice of law as a prerequisite to admission, is outside the scope of reasonable and proper safeguards; it lacks a rational connection with petitioner's fitness or capacity to practice law even if the matter of admission on motion without examination itself may generally be construed as a discretionary action. The qualification is in fact entirely arbitrary and discriminatory against those engaged primarily in the practice of federal law as it affects individual rights and is, therefore, prejudicial. The end result is that proficiency in an area of the law which necessitates relatively infrequent court appearances is made a basis of disqualification from the practice of law in the state.

VIII. No Precedent in State Law for the Court's Rule.

The qualification of court appearance is not reconcilable with existing law in Connecticut.

The State Supreme Court held in an earlier decision, **In re Application of Dodd,** 132 Conn. 237, 242, that "Practice of law is not confined to practice in court." At that time the Court was concerned with the identical provision of the state rule (Sec. 8) and the Court accepted as practice of law administrative activity. The memorandum of decision of the Superior Court in the Dodd case is the only prior state

interpretation as to what the words "has actually practiced . . . in the highest court of original jurisdiction" of Sec. 8 mean. These words in Sec. 8 of the Connecticut rule have not been changed since that decision. The court held:

> "Our rule fixes no standard as to what that practice shall consist of, whether one case in ten years or one case a year. It was suggested that the Lord Chief Justice of England could not be admitted under our rule. Of course not, he is not a member of a state bar, so far as is known. Among the legal fraternity there is frequent discussion as to the legal merit of a trial attorney as against an office attorney. Many of the most eminent attorneys in the large cities of this country and in this state never appear before any court, unless it be a probate court. Judges of our higher courts have occasionally had the same experience. Custom makes law, however, and it has been the recognized custom of our committees on recommendation to consider that one so entitled to practice is an actual practitioner."

While the State Supreme Court in that case overruled the conclusion of the Superior Court which admitted the applicant in the Dodd case, it nevertheless in its decision adopted the reasoning there when it accepted under Sec. 8 of the state rule, administrative non-court work as actual practice of law "in the highest court of original jurisdiction". Thus, the Supreme Court disregards a most pertinent precedent without distinguishing it. The Dodd case deals with the specific provision in dispute and a just disposition of petitioner's case warrants its full consideration. The arbitrariness of the decision in this case

is brought out strikingly by the fact that even now no one is apprised as to what the rule requires in the matter of appearance in court. Is one appearance in five years adequate, or is one appearance each month a requirement? Complete uncertainty prevails even though the State Court in the Dodd case made a point of labelling "practice of law" as a specific concrete requirement.

In another decision, **State Bar Association v. Connecticut Bank & Trust Co.**, 145 Conn. 222, the State Supreme Court in discussing those who may practice law states at page 235:

> "No valid distinction can be drawn between the part of the work of the lawyer which involves appearance in court and the part which involves advice and drafting of instruments."

In deciding petitioner's case, however, the state court arbitrarily adopted a rule conflicting with both of these earlier decisions. The State Court did not distinguish these cases. The state's position as a consequence of the ruling in petitioner's case is such that practice of law means one thing for some cases and another thing for others. The petitioner could not have anticipated this conflicting position of the State Court before the event of the court's decision, **Great Northern Railway Co. v. Sunburst Oil & Refining Co.**, 287 US 358, 77 L ed 360.

CONCLUSION.

This case presents a question "whose resolution has immediate importance far beyond the particular facts and parties involved". The reason relied upon by the state in refusing to admit petitioner to practice law has no rational connection with petitioner's fitness or capacity to practice law. The state rule is entirely arbitrary. In consequence, it has the tendency to encouraging court litigation. Its effect is punitive upon an attorney having special proficiency in an area of law which requires less frequent recourse to court appearance. It permits the state to deprive an attorney from another state, who may be too advanced in years to take the written examination, of his livelihood for a reason having no rational connection with the attorney's fitness or capacity to practice law. The rule, if allowed to stand, would tend to generate occasions for charges of, or at least public impressions of, unauthorized practice incidents by attorneys entirely qualified to engage in the practice of law who may move into Connecticut.

It is respectfully requested that the Supreme Court exercise its power of supervision to forestall the consequences flowing from the arbitrary ruling of the state which makes court appearance a critical qualification for admission.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to Connecticut Supreme Court of Errors to the end that the judgment

of that Connecticut Court may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

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